

They're Not Talking Your Language: The Need for Legislation Guaranteeing the Right to a Foreign Language Interpreter in Connecticut Civil Court

SOPHIA R. NELSON*

TABLE OF CONTENTS

INTRODUCTION.....	100
I. THE FEDERAL COURT INTERPRETERS ACT.....	102
A. WHAT IS A “JUDICIAL PROCEEDING”?	103
B. WHO COVERS THE COST?	104
II. CURRENT STATE OF LANGUAGE INTERPRETATION IN CONNECTICUT COURTS.....	104
A. TYPES OF LANGUAGE INTERPRETATION.....	104
B. OPERATIONS.....	105
III. LANGUAGE INTERPRETER STATUTES ADOPTED BY OTHER STATES...	106
A. STATE DIFFERENCES IN WHETHER TO OFFER AN INTERPRETER...	106
1. STATES THAT GUARANTEE ACCESS TO ANYONE IN ANY PROCEEDING.....	106
2. STATES THAT ONLY GUARANTEE ACCESS TO INDIGENT PERSONS.....	107
3. STATES THAT DO NOT PROVIDE INTERPRETERS TO ANY PARTY OR WITNESS.....	108
B. DIFFERENCES IN WHO PAYS FOR THE INTERPRETERS.....	108
1. STATES THAT PROVIDE INTERPRETERS AT NO COST TO THE PARTIES.....	109
2. STATES WHERE PAYMENT IS AT THE DISCRETION OF THE COURT.....	110
3. STATES THAT ALWAYS REQUIRE THE PARTIES TO PAY FOR INTERPRETERS.....	110
IV. PROBLEMS WITH NOT HAVING A STATUTE GUARANTEEING ACCESS TO FOREIGN LANGUAGE INTERPRETERS.....	111
V. RECOMMENDATIONS FOR THE STATE OF CONNECTICUT	112
A. THE COURT MUST APPOINT A CERTIFIED OR OTHERWISE APPROVED FOREIGN LANGUAGE INTERPRETER IN ALL STAGES OF EVERY PROCEEDING, INCLUDING BOTH CRIMINAL AND CIVIL MATTERS,	

* Sophia Nelson received her J.D. from the University of Connecticut School of Law with a Certificate in Corporate & Regulatory Compliance. She is the Editor-in-Chief of Volume 39 of the *Connecticut Journal of International Law*. Beginning in August 2024, Sophia will be working as a Term Law Clerk for the Connecticut Superior Court. Specifically, she would like to thank UCONN Professors Anne Rajotte, Associate Director of Research, Instruction, and Scholarship, and Darcy Kirk, Distinguished Professor of Law, J.D., Boston College of Law, B.A., Vassar College, for inspiring and mentoring her during her research and writing process.

WHERE A LITIGANT, WITNESS, OR OTHER INTERESTED PARTY COMMUNICATES WITH LIMITED ENGLISH PROFICIENCY.....113

B. THE COST OF UTILIZING FOREIGN LANGUAGE INTERPRETERS IN RELATION TO EITHER A CRIMINAL OR CIVIL MATTER SHOULD BE BORNE BY THE COURT BASED ON A PREDETERMINED FEE SCHEDULE AS DESIGNATED BY THE JUDICIAL BRANCH.....113

C. IF AN INTERPRETER IS NOT PROMPTLY APPOINTED OR REQUESTED AT THE BEGINNING OF A MATTER, THE JUDGE MUST APPOINT A CERTIFIED INTERPRETER AS SOON AS IT BECOMES REASONABLY CLEAR THAT A LITIGANT UNDERSTANDS ENGLISH LESS THAN A FLUENT SPEAKER.....113

CONCLUSION.....114

INTRODUCTION

The American courts maintain that it is “inherent in the nature of justice . . . that those involved in litigation should understand and be understood.”¹ This ultimately involves access to court-appointed foreign language interpreters for those involved in the judicial process and—although it is outside of the scope of this paper—the Fifth Amendment right to an interpreter implicated by a defendant’s due process right to a fair trial.²

Despite our so-called American values, nearly twenty-five million people in the country have limited proficiency in English³ and “one in five people in the United States speaks a language other than English at home.”⁴ Since 1990, that number has almost doubled.⁵

Currently, thirteen million of those individuals live in states that do not offer reliable access to interpreters in the court system.⁶ “Without an interpreter, these individuals are unable to plead their case to a judge, communicate with court clerks, or even converse with their attorney.”⁷ Legally, they are determined to be “limited-English proficient,”⁸ (commonly abbreviated as “LEP”). The term typically covers “individuals ‘born in other countries, children of immigrants born in the United States, and other non-English or LEP persons born in the United States.’”⁹

“The minute an LEP person walks into a courthouse, he or she is at a disadvantage.”¹⁰ Every sign is typically in English, an additional hurdle over and above the “already . . . confusing” and “intimidating” experience of having to go to court.¹¹ Additionally, an LEP litigant is often cut off from some of the most impactful parts of the procedure—negotiations, settlements, and attorney-client communications¹²—which often occur without an

¹ 75 AM. JUR. 2D *Trial* § 163 (2024) (citing *Santana v. N.Y.C. Transit Auth.*, 505 N.Y.S.2d 775 (N.Y. Sup. Ct. 1986)).

² 75 AM. JUR. 2D *Trial* § 163 (2024).

³ U.S. DEP’T JUST. C.R. DIV., LANGUAGE ACCESS IN STATE COURTS 2 (2016).

⁴ Michael Mulé, *Language Access 101: The Rights of Limited-English-Proficient Individuals*, 44 CLEARINGHOUSE REV. 24, 24 (2010).

⁵ Carolyn Harlamert, “Meaningful Access” Demands Meaningful Efforts: The Need for Greater Access to Virginia State Courts for Limited English Proficient Litigants, 23 WM. & MARY J. WOMEN AND LAW, 337, 338 (2017). This statistic is representative of LEPs in the United States in 2017. Realistically, the number has likely increased even more, especially given the impacts on immigration after the COVID-19 pandemic. For more information on those trends, see Sandy Dietrich & Erik Hernandez, *Language Use in the United States: 2019*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/content/dam/Census/library/publications/2022/acs/acs-50.pdf>.

⁶ LANGUAGE ACCESS IN STATE COURTS, *supra* note 3.

⁷ Harlamert, *supra* note 5, at 338.

⁸ Although the terminology equally applies in the language interpretation space, it was coined by the U.S. Department of Justice in the context of national origin discrimination. See Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency, 65 Fed. Reg. 50123 (Aug. 16, 2000).

⁹ Mulé, *supra* note 4, at 24–25.

¹⁰ *Interpreting Justice: Issues Affecting LEP Litigants*, LEGAL SERVS. NYC, <https://www.legalservicesnyc.org/what-we-do/practice-areas-and-projects/civil-rights-initiative/interpreting-justice-language-access-in-the-new-york-courts/issues-facing-lep-litigants> (last visited Dec. 7, 2023).

¹¹ *Id.*

¹² *Id.*

interpreter present, or tend not to occur at all due to the hassle of bringing in an interpreter.

According to the Brennan Center for Justice, reliable access to interpreters includes: (1) being offered at no charge to the litigants; (2) offering interpreters that have essential language and interpreting skills; (3) training judges and the court so that they know how to use interpreters; and (4) according LEP individuals the same treatment as others.¹³ Unfortunately, this does not reflect the laws as written on the books.

The National Center for Access to Justice (NCAJ) identifies language access as one of the five key aspects used to measure access policies and practices in state court systems.¹⁴ Among language access, the NCAJ also assesses (1) access to an attorney, (2) self-representation, (3) language access, (4) disability access, and (5) fines and fees.¹⁵ Currently, Connecticut is ranked as the second best state in the country for language access based on conversations that NCAJ representatives had with government officials and its review of published policies.¹⁶

However, the access that Connecticut's LEP citizens have to justice in the state's courts is currently not a right—it is a privilege. Despite what some state policies may indicate, the state of Connecticut has no statutory right to a foreign language interpreter in any court proceedings, except for instances that deal with the loss of parental rights.¹⁷

Connecticut is certainly not the only state struggling with these issues. Currently, forty-six percent of states fail to require interpreters in all civil cases.¹⁸ If a state does offer an interpreter, it may be one of the eighty percent of states that fail to guarantee that the court will pay for the interpreter.¹⁹ Despite the fact that the lack of access to interpreters is a national—if not global—issue, this paper will be focusing exclusively on the needs of Connecticut persons.

This paper will begin in Part II by introducing the Federal Court Interpreters Act and explaining how Congress has tackled the problem. The paper will then shift to the current state of foreign language interpreter access in the Connecticut Court in Part III, namely the lack of a statutory guarantee of access to an interpreter in civil court. That will be contrasted against the statutes that exist in the other U.S. states in Part IV. Parts V and VI will discuss the problems with not codifying the right to a foreign language interpreter and argue that Connecticut must adopt a version of the

¹³ LAURA ABEL, LANGUAGE ACCESS IN STATE COURTS 9 (2009), <https://www.brennancenter.org/our-work/research-reports/language-access-state-courts>.

¹⁴ LANGUAGE ACCESS IN STATE COURTS, *supra* note 3, at 15.

¹⁵ *Methodology*, NAT'L CTR. ACCESS JUST., <https://ncaj.org/methodology> (last visited Dec. 7, 2023).

¹⁶ *Language Access*, NAT'L CTR. ACCESS JUST., <https://ncaj.org/state-rankings/justice-index/language-access> (last visited Dec. 7, 2023). Connecticut is second only to New Mexico. *Id.*

¹⁷ Conn. Practice Book § 32a-6 (2024) (requiring that an interpreter be provided by the judicial authority “as necessary to ensure [the parties’] understanding of, and participation in, the proceedings.”).

¹⁸ ABEL, *supra* note 13, at 1.

¹⁹ *Id.*

Federal Court Interpreter Statute if it intends to push an access to justice agenda.

I. THE FEDERAL COURT INTERPRETERS ACT

On October 28, 1978, Congress passed Public Law 95-539, “to provide more effectively for the use of interpreters in courts of the United States.”²⁰ After revisions, the modern federal courts operate under the Court Interpreters Act,²¹ which,

provides that the Director of the Administrative Office of the United States Courts shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters . . . for . . . persons who speak only or primarily a language other than the English language, in judicial proceedings instituted by the United States.²²

The federal court interpreter program, established by the Administrative Office of U.S. Courts (the “AO”),²³ requires the use of “certified interpreters” chosen from a list maintained by the District Courts.²⁴ A certified interpreter is an interpreter who has “successfully passed all the required components of the Federal Court Interpreter Certification Examination.”²⁵ That list is then kept at each District Court and is made available to individual litigants or other court participants upon their request.²⁶ If a certified interpreter is not available, the court may deem another individual to be an “otherwise qualified interpreter”²⁷ who meets the standards of the AO.²⁸ In other instances, a party may choose to waive the right to a certified interpreter and use a non-certified interpreter of one’s choice that “can demonstrate to the satisfaction of the court the ability to interpret court proceedings from English to a designated language” and vice versa.²⁹ This non-certified interpreter would be paid for in the same manner

²⁰ Court Interpreters Act of 1978, Pub. L. No. 95-539, 92 Stat. 2040 (amended 1996).

²¹ 28 U.S.C. § 1827.

²² *Federal Court Interpreters*, U.S. CTS., <https://www.uscourts.gov/services-forms/federal-court-interpreters> (last visited Dec. 7, 2023).

²³ § 1827 (a).

²⁴ § 1827 (c)(1). To be considered a “certified interpreter,” you must pass the certification examination put on by the AO. U.S. COURTS, *Court Interpreting Guidance*, in 5 Guide to Judiciary Policy § 110 (2021), <https://www.uscourts.gov/file/22692/download>. Currently, the certification examination involves a multiple choice and written exam and then those invited take an oral performance examination. Carlos A. Astiz, *A Comment on Judicial Interpretation of the Federal Court Interpreters Act*, 14 JUST. SYS. J. 103, 104 (1990). Currently, certification testing programs have only been developed for Spanish, Navajo, and Haitian Creole. *Guide to Judiciary Policy*, *supra* note 24, at 3.

²⁵ *Court Interpreting Guidance*, *supra* note 24, at § 140.

²⁶ § 1827 (c)(1).

²⁷ § 1827 (d)(1).

²⁸ *Court Interpreting Guidance*, *supra* note 24, at § 320.20.

²⁹ Officially, the federal courts refer to these types of interpreters as “Language Skilled/*Ad Hoc*” interpreters. *Interpreter Categories*, U.S. COURTS, <https://www.uscourts.gov/services-forms/federal-court-interpreters/interpreter-categories#a3> (last visited Dec. 7, 2023).

as any other court-appointed interpreter.³⁰ If the party or witness who (A) speaks only or primarily a language other than English; or (B) suffers from a hearing impairment, chooses to pursue a court-appointed interpreter, the clerk of court is responsible for securing the interpreter for the litigant, but the U.S. Attorney must provide one for a witness.³¹

No matter how the individual receives an interpreter in the federal courts, the interpreter must be able to communicate *effectively* in the language of the courts. This would include understanding the “specialized and legal terminology, formal and informal registers, dialect and jargon, [and] varieties in language and nuances of meaning” used in the courtroom and everyday life.³² If the appointed or chosen interpreter cannot communicate in a way that assists the matter, the court may dismiss and replace the interpreter.³³ Alternatively, the judge may decide on a motion whether to supplement the interpreter's services with the use of sound recording software.³⁴ In ruling on said motion, a judge considers three things: “the qualifications of the interpreter and prior experience in interpretation of court proceedings; whether the language to be interpreted is not one of the languages for which the Director has certified interpreters, and the complexity of length of the proceeding.”³⁵

A. What is a “Judicial Proceeding”?

Under § 1827, certified interpreters are appointed “in *judicial proceedings* instituted by the United States.”³⁶ A judicial proceeding is defined in this section as “all proceedings, whether criminal or civil, including pretrial and grand jury proceedings . . . conducted in or pursuant to the lawful authority and jurisdiction of a United States district court.”³⁷

This definition is extremely broad; there are few exceptions to the types of proceedings that are included. Of the limited litigation that has ensued over the phrase “judicial proceeding,” only transcripts of conversations outside of court³⁸ and meetings of creditors at a discharge hearing³⁹ have been excluded.

³⁰ § 1827 (f)(2).

³¹ § 1827 (c)(2)–(d)(1).

³² *Federal Court Interpreters*, *supra* note 22.

³³ § 1827 (e)(1).

³⁴ § 1827 (d)(2).

³⁵ *Id.*

³⁶ § 1827 (d)(1) (emphasis added).

³⁷ § 1827 (j).

³⁸ *U.S. v. Lira-Arredondo*, 38 F.3d 531, 533–34 (10th Cir. 1994).

³⁹ *In re Morrison*, 22 B.R. 969, 970 (Bankr. N.D. Ohio 1982), *reconsideration denied*, 26 B.R. 57 (Bankr. N.D. Ohio 1982).

B. *Who Covers the Cost?*

Even under the best laid system, someone must bear the cost. Under the Federal Court Interpreters Act, the interpreters are all paid wages by the court.⁴⁰ The statute authorizes appropriate sums to be allocated to the Director of the AO to facilitate the use of the interpreters.⁴¹

To determine the amount owed to each individual interpreter, the master list controlled by the District Courts includes a fee schedule that predetermines the costs and wages due.⁴² Thus, the entire court interpreter program is contingent on the Judiciary being appropriated sufficient funds to carry out said program.⁴³

II. CURRENT STATE OF LANGUAGE INTERPRETATION IN CONNECTICUT COURTS

A. *Types of Language Interpretation*

The State of Connecticut Judicial Branch Superior Court Operations Division offers three types of interpreter services: simultaneous, consecutive, and sight.⁴⁴ “Simultaneous interpretation . . . is performed within seconds of the original speech . . . [and] requires that interpreters listen and speak almost concurrently with the primary speaker whose words are being translated.”⁴⁵ The interpreters are ultimately performing “two tasks simultaneously in the field of language communication that otherwise are always practiced separately: speech and understanding.”⁴⁶

Consecutive interpretation, by contrast, operates in the “‘question and answer’ mode in which the speaker completes a statement and the interpreter begins to interpret after the statement is completed.”⁴⁷ This mode is most often utilized when a witness is on the stand and can involve either a long or short method.⁴⁸ The short method is most often used, while the long method is “reserved for some forms of conference interpreting.”⁴⁹

The final mode of interpretation is sight interpretation. Here, “the interpreter is provided with a written document in the source language [and t]he interpreter must take sufficient time to read and review the document before rendering it aloud in the target language, while reading it silently in the source language.”⁵⁰

⁴⁰ § 1827 (g)(1).

⁴¹ *Id.*

⁴² § 1827 (b)(3).

⁴³ § 1827 (g)(2).

⁴⁴ STATE CONN. JUD. BRANCH, ES-212, INTERPRETER AND TRANSLATOR SERVICES (rev. ed. 2009), <https://www.jud.ct.gov/Publications/es212.pdf>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ INTERPRETER AND TRANSLATOR SERVICES, *supra* note 44.

B. Operations

According to publications from the Superior Court Operations Division, language interpretation is “a crucial component of 21st century justice.”⁵¹ Citing the *United States ex rel. Negrón v. State of New York*,⁵² the Superior Court Division goes so far as to label it a right protected under our Constitution.⁵³ However, the legislature has not followed suit and has instead neglected to implement an official statutory guarantee to a language interpreter in all cases.

The Interpreter and Translator Services unit was “established to serve the judiciary in court-related proceedings at no cost to the . . . defendants, victims, witnesses, and family members in criminal cases.”⁵⁴ The use of the term “in criminal cases” contrasts starkly from the Federal Court Interpreters Act which guarantees access to court interpreters in *all judicial proceedings*.⁵⁵ In fact, there is no statute or case law in the state of Connecticut whatsoever that guarantees the right to a foreign language interpreter in civil proceedings, with the sole exception being a requirement that an official interpreter be provided to the parties in proceedings for child abuse and the termination of parental rights.⁵⁶ Although the Judicial Branch documents imply that they are used in civil proceedings,⁵⁷ as of today, this is only a privilege—it is not a right enshrined by the Connecticut General Assembly. Notably, the documents do not indicate with any empirical evidence how frequently foreign language interpreters are utilized in the civil proceedings or hearings.

Because interpreters are not required to be appointed in these instances, the parties, regardless if they are pro-se or represented by counsel, must request the interpreters themselves.⁵⁸ It is highly unlikely that an indigent pro-se litigant will request such accommodations.⁵⁹ Adding to the confusion, if an individual requires the use of an interpreter, they are directed to the

⁵¹ *Id.*

⁵² *United States ex rel. Negrón v. State of New York*, 434 F.2d 386 (2d Cir. 1970).

⁵³ INTERPRETER AND TRANSLATOR SERVICES, *supra* note 44.

⁵⁴ *Id.*

⁵⁵ *See supra*, Part I(A); § 1827 (j).

⁵⁶ Conn. Practice Book § 32a-6 (2003).

⁵⁷ *Id.* The Interpreter and Translator Services Department of the Superior Court Operations Division lists eighteen different types of proceedings that interpreters are involved in: Arrangements, Hearings for Probable Cause, Motions to Suppress Evidence, Victim Interviews, Pre-trial Interviews and Hearings, Criminal Jury and Non-Jury Trials, Pre-Sentence Investigations, Psychological Evaluations, Probation Intake Interviews and Hearings, Competency Interviews and Hearings, Generally Information and Clerk’s Office, Motor Vehicle Infractions, Domestic Violence Proceedings, Attorney / Client Interviews, Juvenile Hearings and Trials, Support Enforcement and Family Matters, Restraining Orders Proceedings, and Housing Matters. *See also* CONN. GEN. STAT. § 52-257 (2006) (directing the Court to issue \$20 per diem to the parties if an interpreter is used in a civil action).

⁵⁸ INTERPRETER AND TRANSLATOR SERVICES, *supra* note 44.

⁵⁹ *See* Abdulla Z. Khalil, *An Imperfect Solution: The Due Process Case for Providing Court-Appointed Interpreters for Pro Se Plaintiffs*, 10 Tex. A&M L. Rev. Arguendo 68, 70 (2023) (noting that “for indigent pro se plaintiffs who do not speak English, the [Federal Court Interpreters] Act and federal judiciary policies institute what is, in effect, a constructive denial of their access to a competent court interpreter. Without access to an interpreter, it is virtually impossible for these plaintiffs to vindicate, or attempt to vindicate, their private grievances.”).

Clerk's Office, Court Service Center, or other Judicial Branch staff member.⁶⁰ In other words, there is no central location at the court to receive translation service requests. If one were to do independent research online instead, the Judicial Branch's website dedicated to the Interpreter and Translator Services Unit only translates into English, Polish, or Portuguese, despite its stated particular interest in hiring interpreters with language skills in Spanish, Portuguese, Polish, Albanian, Chinese Cantonese, Korean, Haitian Creole, Chinese Mandarin, Russian, or Vietnamese.⁶¹ With hurdles such as these, it will be difficult for Connecticut to realize its goal of "ensur[ing] that every participant in a judicial process is able to communicate effectively."⁶²

III. LANGUAGE INTERPRETER STATUTES ADOPTED BY OTHER STATES

Unlike Connecticut, almost all of the fifty U.S. states have enacted some figure of a language interpreter statute,⁶³ regardless of how substantial. There are, however, significant discrepancies in terms of who can receive a court-appointed interpreter and whether the court will pay for the interpreter once one has been appointed.

A. *State Differences in Whether to Offer an Interpreter*

In determining whether to provide an interpreter at all, states have taken different approaches. The key variations between the statutes are that some guarantee access to interpreters in any proceeding to anyone, and others require that the individual be indigent, or do not provide an interpreter at all. The selected states below exhibit these variations.

1. *States that guarantee access to anyone in any proceeding*

As an example, the state of Idaho has one of the broadest statutory guarantees to a foreign language interpreter in the country. The statute guarantees that "in any civil or criminal action in which any witness or a party does not understand or speak the English language . . . then the court shall appoint a qualified interpreter to interpret the proceedings to and the testimony of such witness or party."⁶⁴ Upon appointment, the court has the interpreter swear to accurately and fully interpret the testimony given to the

⁶⁰ INTERPRETER AND TRANSLATOR SERVICES, *supra* note 44.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *State Statutes Requiring the Provision of Foreign Language Interpreters to Parties in Civil Proceedings*, AM. BAR ASS'N COMM. DOMESTIC VIOLENCE (Dec. 2008), https://www.rainn.org/pdf-files-and-other-documents/Public-Policy/Legal-resources/Foreign_Language_Interpreter_Chart_12_2008.pdf.

⁶⁴ IDAHO CODE § 9-205 (1975) (amended 2023).

best of his ability before assuming his duties.⁶⁵ All reasonable fees are then paid out of the district court fund.⁶⁶

The District of Columbia (D.C.) takes a slightly different approach but comes to the same result. In D.C.,

[w]henver a communication-impaired person is a party or witness, or whenever a juvenile whose parent or parents are communication impaired is brought before a court at any stage of a judicial or quasi-judicial proceeding, . . . the appointing authority may appoint a qualified interpreter to interpret the proceedings to the communication-impaired person and to interpret the communication-impaired person's testimony . . . upon the request of the communication-impaired person.⁶⁷

Of course, the key difference between the D.C. and Idaho statute is that, in D.C., the party must physically request the appointment of an interpreter. If they fail to do so, it may be that the party forfeits that ability.

However, if they can submit their request in a timely manner, an interpreter is appointed in any judicial or quasi-judicial proceeding.⁶⁸ Some examples include “civil and criminal court proceedings, proceedings before a commissioner, juvenile proceedings, child support and paternity proceedings, and mental health commitment proceedings.”⁶⁹

2. States that only guarantee access to indigent persons

By contrast, some of the states only guarantee access to indigent persons. This can cause significant problems. Although providing interpreters at no cost for those that are indigent is a helpful starting point, it “is not a sufficient benchmark for providing meaningful access. Income guidelines are set for the extremely poor” and many . . . do not qualify for a free interpreter if they have any type of employment.⁷⁰

Because of these drawbacks, Pennsylvania saves costs by requiring that individuals who are not parties or witnesses provide their own interpreter unless they are indigent. Regardless of cost, the court will provide interpreters for the “principal party in interest or a witness,” but additional individuals must provide their own.⁷¹

In this author’s opinion, this provision foreseeably has the most intense impact on parents of juveniles. Although the juvenile may be the “principal party in interest,” a limited-English speaking parent or guardian would need

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ D.C. CODE § 2-1902(a) (2007) (emphasis added).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Harlamert, *supra* note 5, at 349.

⁷¹ 42 PA. CONS. STAT. § 4416 (2007).

an interpreter to understand the process to which their child is being subjected. In Pennsylvania, unless the parent is indigent, they would have to provide their own interpreter.

3. States that do not provide interpreters to any party or witness

Alaska lies at the opposite extreme of the spectrum. Alaska requires that “[p]arties who need an interpreter because they or a witness are LEP must provide their own interpreter.”⁷² Regardless of the financial strife of a party, the court is not required by statute to provide those services.

As of 2020, the Alaskan courts have promulgated a Language Access Plan which dictates the state of language services in the state.⁷³ The plan indicates that the Language Services Director and the Interpreter Services Coordinator develop and implement policies regarding interpreters⁷⁴ and train judicial officers and court staff “to recognize the needs of LEP individuals and to err on the side of caution in determining when to provide interpreting services.”⁷⁵ Although there is no definition of what “erring on the side of caution” means, the state’s interpreter program is supposed to “provide[] interpreting services when a person involved in a court proceeding, including defendants, victims, or witnesses, does not read, write, speak, or understand English sufficiently to participate in the proceedings . . . for all case types.”⁷⁶

Thus far, this program in Alaska appears the most similar to what we see here in Connecticut. The state has enacted procedures that allow access to interpreters, but statutes do not guarantee any such right. Under this sort of a regime, fluctuations in funding and geopolitics can influence the access that citizens have to their courts.

B. Differences in Who Pays for the Interpreters

“The DOJ has emphasized that, ‘[c]ourt systems that charge interpreter costs to LEP persons impose an impermissible surcharge on litigants based on their English language proficiency.’”⁷⁷ However, that has not stopped numerous U.S. states from imposing such hurdles. Below, this piece outlines the different approaches that states have taken to funding state court language interpreter programs. The approaches include fully funding the program at no cost to the parties, absorbing the cost of court interpreters for indigent parties, and requiring that all parties, regardless of financial hardship, pay for their own interpreters.

⁷² Alaska Admin. R. 6(b)(2), <https://courts.alaska.gov/rules/docs/adm.pdf>.

⁷³ ALASKA CT. SYS. LANGUAGE ACCESS PLAN (Jan. 2020), <https://courts.alaska.gov/language/docs/language-access-plan.pdf>.

⁷⁴ *Id.* at 4.

⁷⁵ *Id.* at 5.

⁷⁶ *Id.* at 5–6.

⁷⁷ Harlamert, *supra* note 5, at 348.

1. *States that provide interpreters at no cost to the parties*

As noted above, Idaho has one of the broadest statutory guarantees in America. In addition to guaranteeing the right to an interpreter for any witness or party, the Idaho courts “determine a reasonable fee for all such interpreter services” and promise that those fees will be paid out of the district court fund.⁷⁸ However, the statute still maintains a fourteen day notice requirement.⁷⁹ If the individual in need of an interpreter fails to notify the court at least fourteen days in advance without good cause *and* the court proceeding is postponed *as a result*, “the court may impose costs and expenses against the party or the party’s attorney.”⁸⁰ This ultimately implements a three prong test for expenses to be charged against a party: (1) the party must fail to notify the court, (2) the party must be unable to show good cause for failing to notify, and (3) the proceeding must have been effectively postponed. The odds of meeting all these requirements are quite low.

Kentucky similarly guarantees that the court will pay for all interpretation services. Enshrined in statute, Kentucky courts will appoint interpreters “in any matter, criminal or civil . . . to be paid out of the State Treasury, for . . . (b) Persons who cannot communicate in English.”⁸¹ For the sake of the statute, it does not matter if the person is a party, juror, or witness,⁸² as long as they are actively involved in the judicial process. The LEP can either request the interpretation services or, if they do not make a request, the judge may “conduct a brief voir dire in order to evaluate the extent to which the individual reads, speaks, writes, and/or understands English and determine whether or not language access services are needed.”⁸³ Regardless of the method of implementation, however, “the [Administrative Office of the Courts] will be responsible for payment, including ordinary and reasonable expenses . . ., for language access services.”⁸⁴

As recently as 2016, New York took this one step further by guaranteeing in a special Administrative Order that no party in any civil or criminal case would have to pay for foreign language interpreters, “as justice requires.”⁸⁵ This seems to be a nod to the Department of Justice’s indication that other states should follow suit.

⁷⁸ IDAHO CODE § 9-205 (1975) (amended 2023).

⁷⁹ Idaho R. Civ. P. 43(c).

⁸⁰ *Id.*

⁸¹ Ky. Rev. Stat. Ann. § 30A.410 (West 1994).

⁸² *Id.*

⁸³ Order In Re: Amendments to the Administrative Procedures of the Court of Justice, Part IX, Kentucky Court of Justice Language Access Plan and Procedures 2017–15 (2017), <https://www.kycourts.gov/Courts/Supreme-Court/Supreme%20Court%20Orders/201715.PDF>.

⁸⁴ *Id.*

⁸⁵ Order Amending Title 22 Part 217.1 of New York Codes, Rules and Regulation (2016), <https://www.nycourts.gov/LegacyPDFS/rules/trialcourts/Part%20217.pdf>.

2. States where payment is at the discretion of the court

In Indiana, any person “who cannot speak or understand the English language . . . and who is a party to or a witness in a civil proceeding is entitled to an interpreter to assist the person throughout the proceeding.”⁸⁶ Once an interpreter has been established, it is up to the court to determine the manner in which the interpreter is to be paid.⁸⁷

Currently, there is no established method for the court to determine who should be paying. Instead, in *Arietta v. State*, the Indiana Supreme Court indicated that the public should pay for the interpreter when a litigant is found indigent.⁸⁸ Otherwise, the State recognizes that there is technically no requirement to appoint and provide an interpreter at the court’s costs.⁸⁹

Payment for court interpreters is also discretionary in Maryland. Any party, victim, or victim’s representative may apply for an interpreter in the state, and, upon receipt of the application, the court must appoint an interpreter.⁹⁰ It is the court’s decision, however, whether to assess the cost of said interpreter against the parties as a cost of court.⁹¹

3. States that always require the parties to pay for interpreters

Prior to 2021, Louisiana required that the costs of providing interpreters to its litigants be taxed out as costs of court to be reimbursed by the parties.⁹² Thankfully, the 2021 version of the bill eliminated the reimbursement language and simply states that all costs will be borne by the courts.⁹³

The statutes in Alaska, however, have not been changed. Instead, the Alaska Court Rules state that “the court system will provide and pay for the necessary services of an interpreter . . . : (1) for the parents or guardian of the juvenile in delinquency proceedings, and (2) for the tribal representatives, foster parents, out-of-home care providers, or grandparents in child-in-need-of-aid proceedings.”⁹⁴ In any other proceeding, it is not the responsibility of the court to pay for the court interpreters. That instead falls on the parties. However, in the instances where the court does decide to pay, the rate is determined by the Interpreter Services Coordinator as dictated in Alaska Courts Administrative Bulletin No. 82.⁹⁵

⁸⁶ IND. CODE § 34-45-1-3 (2023).

⁸⁷ *Id.* § 34-45-1-4.

⁸⁸ IND. SUP. CT., LANGUAGE ACCESS PLAN FOR THE INDIANA JUDICIAL BRANCH 19 (2019), <https://www.in.gov/courts/files/language-access-plan.pdf> (last visited Dec. 7, 2023). *See Arrieta v. State*, 878 N.E.2d 1238, 1244 (Ind. 2008).

⁸⁹ IND. SUP. CT., *supra* note 84, at 19–20.

⁹⁰ MD. CODE ANN., CTS. & JUD. PROC. § 9-114(a) (2022).

⁹¹ *Id.* § 9-114(b).

⁹² LA. CODE CIV. PROC. ANN. art. 192.2 (2019) (amended 2021).

⁹³ *Id.*

⁹⁴ Alaska Admin. R. 6(b), <https://courts.alaska.gov/rules/docs/adm.pdf>.

⁹⁵ *Id.* at 6.1(b) (indicating that the reader should refer to STACEY MARZ, ADMINISTRATIVE BULLETIN NO. 82 (Apr. 18, 2022), <https://courts.alaska.gov/adbulls/docs/ab82.pdf>).

IV. PROBLEMS WITH NOT HAVING A STATUTE GUARANTEEING ACCESS TO FOREIGN LANGUAGE INTERPRETERS

“Without [proper interpretation in court] the trial is but a ‘babble of voices’” and the LEP is nothing more than an “‘insensible object’ who passively observes in complete incomprehension. The appointment of an interpreter is, thus, crucial to safeguarding the fundamental fairness of the trial.”⁹⁶ The stated goal of the Federal Interpreter statute is candidly “to give non-English speaking and hearing/speech-impaired [plaintiffs,] defendants and witnesses an equal chance to understand and participate in criminal and civil trials in federal courts.”⁹⁷ The direct result of interpreter appointment is to enable a non-English speaker to understand the proceedings and permit others in the courtroom to understand any testimony that the speaker may give.⁹⁸ Without that opportunity, it would be as if the LEP was observing the proceeding from within “a soundproof booth . . . , being able to observe but not comprehend.”⁹⁹

For example, “Kimberly Iden, an attorney specializing in representation of immigrant survivors of violence,” has retold this story:

I think that clients who understand some English or speak some English tend to try to get by with what they know. I've seen this create various problems. As a specific example, I have had a couple of clients in domestic violence situations who have received phone calls from a prosecutor's office in regards to pending criminal cases and think that they are being told that charges have been lowered against an abuser when in reality they are being asked if they agree to the charges being lowered. They might not agree but do not understand that they can state their objection. I now consider it part of my job to try to ensure that clients know that they have the right to request an interpreter in this situation.¹⁰⁰

Despite the impact that an interpreter can have, a survey detailed in the Harvard Latino Law Review found that 46% of the thirty-four states surveyed failed to implement interpreters in appropriate civil cases.¹⁰¹

⁹⁶ Patricia Walther Griffin, *Beyond State v. Diaz: How to Interpret “Access to Justice” For Non-English Speaking Defendants?*, 5 Del. L. Rev. 131, 151 (2002).

⁹⁷ Astiz, *supra* note 24, at 103.

⁹⁸ Griffin, *supra* note 96, at 1.

⁹⁹ Maxwell Alan Miller, Lynn W. Davis, Adam Prestidge, William G. Eggington, *Finding Justice in Translation: American Jurisprudence Affecting Due Process for People with Limited English Proficiency Together with Practical Suggestions*, 14 HARV. LATINO L. REV. 117, 117 (quoting *State v. Natividad*, 526 P.2d 730, 733 (Ariz. 1974)) [hereinafter Miller].

¹⁰⁰ Gretchen Hunt, *Challenges Faced by Attorneys and Advocates Working on Behalf of Clients with Limited English Proficiency*, 76 BENCH & BAR 15, 15 (2012).

¹⁰¹ Miller, *supra* note 99, at 130.

Although the numbers fair better in criminal cases,¹⁰² the absence of a constitutional right to an interpreter for civil litigants leaves them entirely reliant on a statutory guarantee.¹⁰³ When no statutes exist, all that an LEP person has is reliance on a government that time and again prioritizes the majority over its minority members.¹⁰⁴

Effectively, this will keep an entire portion of the population excluded from the judicial process. If an interpreter is not appointed in civil cases, litigants “can’t protect their children, they can’t protect their homes, they can’t protect their safety, [and] Society suffers because its laws cannot be enforced.”¹⁰⁵ Only through the assistance of an interpreter funded by the court’s themselves can we “ensure meaningful access to open, fair, efficient, and unbiased courts.”¹⁰⁶ If the costs are not covered by the court, “[t]here is a real concern that by imposing interpretation costs on LEP litigants they will ‘abstain from requesting interpreters, and judges [will] abstain from appointing them.’”¹⁰⁷ This could directly result in LEP people deciding to struggle through the appearance of being able to communicate,¹⁰⁸ placing them at a significant disadvantage in a civil action.

This is most evident with low-income litigants. LEP persons that must pay for their own interpreters bear greater financial burdens in pursuing a case.¹⁰⁹ Ultimately, they may decide not to pursue any action whatsoever. Low-income individuals already pursue less civil legal claims than traditional litigants. In fact, three of every four low-income families have at least one legal problem each year, but they pursue claims for only one of every four problems they experience.¹¹⁰ If that individual speaks a language other than English, the additional barriers to entry will inevitably decrease that percentage even further.

V. RECOMMENDATIONS FOR THE STATE OF CONNECTICUT

Even with states doing their best to offer the minimum protections for LEP speakers, language access must go beyond. This includes enacting expansive language access legislation for interpreters in civil court. Below are specific recommendations to be included in a newly enacted Connecticut bill guaranteeing the right to a foreign language interpreter in civil court.

¹⁰² *Id.* at 130–31.

¹⁰³ Compare with the constitutional right to language access services in the courtroom as established under the Fifth, Sixth, and Fourteenth Amendments. *See, e.g.*, Judge Lynn W. Davis & Scott A. Isaacson, *Ensuring Equal Access to Justice for Limited English Proficiency Individuals*, 56 JUDGES’ J. 21, 22 (2017).

¹⁰⁴ *Id.* at 21 (highlighting that “[t]he majority of people living in the United States communicate in English. However, for many others, English is not their first or primary language.”)

¹⁰⁵ *Id.* at 22 (quoting Chief Judge Eric T. Washington, D.C. Court of Appeals, Experts Speak on Language Access, Nat’l Ctr. for State Courts (2013), [vimeo.com/66249113](https://www.vimeo.com/66249113)).

¹⁰⁶ Davis & Isaacson, *supra* note 99, at 22.

¹⁰⁷ Harlamert, *supra* note 6, at 349 (quoting ABEL, *supra* note 13, at 17).

¹⁰⁸ U.S. DEP’T JUST. C.R. DIV., *supra* note 3, at 7.

¹⁰⁹ *Id.*

¹¹⁰ LEGAL SERV. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 8 (2022), <https://lsc-live.app.box.com/s/xl2v2uraitobbzrhujlgi0emp3myz1>.

A. The Court Must Appoint a Certified or Otherwise Approved Foreign Language Interpreter in All Stages of Every Proceeding, Including Both Criminal and Civil Matters, Where a Litigant, Witness, or Other Interested Party Communicates with Limited English Proficiency.

The first step in ensuring that justice is accessible to all participants in Connecticut court is to ensure that a language interpreter is appointed at all stages of a proceeding where it becomes clear that an interested party cannot communicate with fluency in English. This seems like a baseline requirement, but it is still strikingly absent from the General Statutes. If Connecticut does not enact such a statute, the state risks losing the current practices that have received such praise from national organizations.¹¹¹ Its citizens have been lucky enough to have been provided with interpreters without a statutory guarantee. However, until the legislature passes a formal requirement, Connecticut citizens lack the right to fully understand the legal process, further disenfranchising largely low-income and immigrant communities.

B. The Cost of Utilizing Foreign Language Interpreters in Relation to Either a Criminal or Civil Matter Should be Borne by the Court Based on a Predetermined Fee Schedule as Designated by the Judicial Branch.

As an attempt to remedy the disenfranchisement of the poor, the new Connecticut statute should guarantee that the state will bear the cost of providing interpretation services, regardless of the income of the LEP person in need. If the court is concerned about officially bearing the additional costs, they could petition bar foundations to create alternative interpretation services to implement volunteer language speakers in court. It is also highly likely that the court already has a designated budget for providing interpreters given that they are supposedly being appointed with some regularity already. If anything, a statutory guarantee will ensure that the judicial budget will remain well-stocked for interpreter fees.

C. If an Interpreter is Not Promptly Appointed or Requested at the Beginning of a Matter, the Judge Must Appoint a Certified Interpreter as Soon as it Becomes Reasonably Clear That a Litigant Understands English Less Than a Fluent Speaker.

The third requirement for the new statute is a safeguard that an interpreter be appointed if it later becomes clear that an individual who seemed to understand the proceedings later indicates that they have become confused or is missing key points of the process. This should be an objectively reasonable standard. Many individuals speak at least some conversational English. However, the legal process is much more complex and includes significant terminology that is not well-understood by even

¹¹¹ *Language Access*, *supra* note 17.

prolific speakers. Once you introduce a language barrier, LEP people are further disadvantaged. Therefore, allowing the appointment of interpreters at later phases is necessary to ensure full and complete involvement in the legal process.

CONCLUSION

Currently, the state of Connecticut has an office dedicated to protecting the rights of limited English speakers in its courts.¹¹² However, the state has no established statutes for its citizens to actually reap the benefits of that program. Because of this, access to the courts is significantly hindered for over twenty percent of the Connecticut population.¹¹³ If any of those individuals identifies a legal problem in their daily lives, the mere fact that they speak another language could bar them from ever pursuing a remedy. That can hardly be considered justice.

The author urges the state of Connecticut to consider enacting an official state interpreter statute that pulls inspiration from some of the best aspects of the Federal Court Interpreter Statute and fellow U.S. state statutes. It is important that the legislation gives the judge broad leeway in appointing interpreters as soon as a litigant, witness, or interested party indicates, directly or indirectly, that they require assistance. This should be at no cost to the LEP person and be flexible enough to allow the appointment of interpreters at later stages of the litigation if it becomes clear that someone who seemed to understand the proceeding in fact lacks understanding. Maybe then, our non-English speakers will start to experience the justice that our Constitution proposes to guarantee.

¹¹² For more information on Committee on Limited English Proficiency, see Public Service and Trust Commission: Committee on Limited English Proficiency, STATE OF CONNECTICUT: JUDICIAL BRANCH, <https://www.jud.ct.gov/Committees/pst/lep/default.htm> (last visited May 26, 2024).

¹¹³ STATE CONN. JUD. BRANCH, LANGUAGE ACCESS PLAN (2023), <https://www.jud.ct.gov/lep/LanguageAccessPlan.pdf>.